

Exhibit # ATTACH F



Re: ZTA TXT2010-00224 Fee in Lieu of Public Space
Brenda Bean to: Kathleen Reitz
Cc: mayorcouncil, Susan Swift, Joe Thompson

Subject: _____
Public Hearing Date: 12/14/2009 12:02 PM

Hi Kathy,

Thank you for your note regarding the above referenced text amendment application. Your comments, have been seen by the Mayor and Council as well as other appropriate staff and will be considered as part of the official record. (The record will close today at 5:00 pm.)

This matter will next come before the Mayor and Council again on January 11th for discussion and instruction to staff. At their meeting on January 25th, the Mayor and Council will introduce either an ordinance approving the legislation or a resolution denying it. Final disposition will likely occur at the meeting of February 8th.

Thank you again for sharing your thoughts with us. The Mayor and Council appreciate the feedback they receive.

Brenda Bean

Brenda F. Bean
Deputy City Clerk
111 Maryland Avenue
Rockville, Maryland 20850
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"Kathleen Reitz"

Dear Mayor and Council:

12/14/2009 11:34:44 AM

From: "Kathleen Reitz" <kreitz@whalenproperties.net>
To: <mayorcouncil@rockvillemd.gov>
Date: 12/14/2009 11:34 AM
Subject: ZTA TXT2010-00224 Fee in Lieu of Public Space

Dear Mayor and Council:

The purpose of this letter is to provide public comment on the above referenced items. It is my understanding that these comments will be included into the public record which closes Monday December 14, 2009. Considering the gravity of these items, I also hereby request that the public record be left open until mid January and that the Mayor and Council reschedule their discussion

and instruction to staff until these items can be studied and understood more thoroughly.

By way of introduction, I have been a commercial real estate broker in Rockville for 30 years. In addition I have lived in or around Rockville most of my life. My specialty is retail brokerage and in that capacity I represent national and local firms.

Please institute another text amendment to strike this entire public use dedication from the zoning code. The modification of the zoning code was so all-encompassing that it included many unworkable and impractical elements. I think it is unconstitutional and certainly immoral. It puts an extraordinary burden on properties, particularly smaller ones, especially in these very hard times. The citizens of Rockville will expect you to protect them from the cost of future litigation by honestly looking into the legal issues right now. How can it be right for you to essentially take somebody's property without compensation or make them pay the City to stop you from doing it? Extortion is usually illegal.

Failing that, the City will be well served if there is far more flexibility in ALL zones and to reduce these fees substantially. Perhaps there would be a way to get public space amenities on projects by offering some incentive to developers if they put it in, rather than an actual taking. That way if it made sense they would be incentivized rather than punished.

I am sure that any public spaces you manage to get on individual properties by way of the current zoning will be ineffective to that end. Did you find a case study of any City in the US where this plan has worked both aesthetically and financially? If not, why run such an experiment here in the face of all the practical concerns?

Any large mixed use development has to find a way to be inviting to the public to be successful. They should be allowed to do this in creative ways that are dictated by the nature of their parcel rather than a one-size-fits-all requirement. They might even design a green roof or something fun contained within the structure. These sorts of creative ideas will be stifled by the cost burden and the additional land restrictions you place on the land owner. The burden is even more cumbersome on small properties because either the loss of land or the fee is too great to sustain a viable redevelopment. Furthermore, since the regulations are so onerous, the planning staff and commission will be even more burdened by negotiations on each individual case as desperate land owners try to figure out how to get some income from their properties.

Citizens who think this idea sounds nice but have never owned a commercial property or run a small business on one, are owed detailed analyses of how this would affect the area fiscally so they can see the *big picture*. There is a tendency for people to think that anybody who owns commercial land is rich and that rich people always have more and more money that can be taken in taxes or some other way. Envy kills the goose that lays the golden egg and blinds people from understanding the risk and responsibilities taken on by businesses which keep citizens employed and provide services for a community. Anyway, right now some of these land owners are hanging on for their lives right now.

Common sense analysis of the effects will show that these rules are barriers to development. They will be a detriment to everyone in the community by limiting quality commerce in the locale, stifle the creation of jobs, a lowering of the assessed values of developed properties, and lowering the sales prices of properties that need redevelopment. Very capable developers and businesses may take their talents to other more welcoming communities. Properties slip into decline and obsolescence. They will stay there too for too long. It will force our residents to shop outside the City limits. We already know shopping elsewhere is an increasing trend. In short, the dream of a 24/7 live/work community is farther from reality.

Either in the fee in lieu of or the actual dedication scenario the property is devalued. If you take 20% away from being developable the income potential of the property is reduced. If you vastly increase the cost of development with the fee in lieu of scenario, then the value is lowered. Any combination of the two is still detrimental. A planner told me last week that this flexibility was a good thing and it took care of the problem. How, I don't know. A developer who looks at a property to buy already knows what kind of rents or condo prices they can get for the finished product. This isn't going to change with regards to what the developer spends up front. They add up the costs of development and if it is too high commensurate with the risk and the underwriting for getting a loan, then there will be downward pressure on the sales price of the property or greatly delay the sale while the seller fully absorbs the bad news.

I would like to relay an experience I have had in trying to broker a sale for the Shell station at 15190 Frederick Road in front of College Plaza. I represent a national retail tenant, who is very interested purchasing this site. Motiva, a Houston based oil company is the seller. This seller, like all sellers, would like to have somebody step forward to buy this with just a quick study period and to close within a few weeks. They are very insistent on this and in other parts of the country this is fine but not in a place where the risk and expense of redeveloping a property is as high it is in Rockville. Since they are a large, far away organization they may continue to be

insensitive to local conditions, perhaps leaving the property vacant for years.

The City Zoning rules and in particular this taking of lands for public use has killed the deal for my buyer. My buyer then brought in a developer with local experience who said that they may take the risk of buying without a permit since it was on 355. Once they took a look at the situation they turned it down too.

Neither will assume the risk to close a sale on this property before they have a building permit. Their pro forma showed that in order to get the deal approved they would have to offer a laughably low price because of all the soft costs associated with this property. They require a new 7300sf building and need parking 5/1000sf for straight retail use. Already there is a recorded easement for public ingress and egress (a 355 service drive) that is about 20% of the land but this does not appear to count towards this public use taking. And that is in addition to the 10% green space requirement which also does not count towards the public use dedication. We are up to approximately 50% unusable already!

In my buyer's case there is no way they could dedicate an additional 20%. Here are my calculations on this property based on my interpretation of the material the City has published:

Land size: 40,000sf

Building size: 1,631sf

Assessed value of the land: \$1,040,000

Total Assessment: \$1,377,900.

20% of land: 8,000sf

Assessed value of 8,000sf: + \$200,000 (assuming only land assessment not total assessment is used.

\$3/sf of 8,000sf: \$24,000

Total fee in lieu: \$224,000 with just land and \$299,500 on total assessment.

The asking price of the property is \$1,100,000. So regardless of the final sales price, the City fee

would be a minimum of 20% of the sales price. That is impressive. How can a profit be made by anybody but the City? No retailer's gross sales are going to increase because a property is expensive, net profit is reduced instead. If they can't make a deal work, they usually go away. If a retailer decides to take the risk and then realized the property wasn't viable for them, there would be another sale but this time all the serious problems would be right out in the open for all to see and there would be increasing downward pressure on the next sales price.

Soon many of these smaller properties that can't easily be redeveloped will be rented by marginal businesses which do not concern themselves with high aesthetic standards. The properties will be frequently vacant with temporary tenants from time to time-- Christmas trees, nomadic furniture and "gift" sellers, etc. After a while the citizens will be asking elected City officials why so many properties are looking seedy, even blighted.

The less a property is worth and the longer it sits vacant, the less tax money is collected on it. Seems obvious but why isn't this more important to the City? Ordinary people who don't make these things their business will only see that the environment is getting more ugly rather than inviting--the direct opposite of the intention of this zoning rule. The Mayor and Council can prevent this.

I am aware of a very large property in Chantilly, Fairfax County named Sully Place. It had a very large square footage and about 10 years ago most of the anchor tenants were empty. It needed redevelopment and better access to the roads. The property was eventually partially redeveloped and the County and VDOT partially cooperated by allowing improved access. I have attached an aerial photo where you will see the park proffer required by the County to get what they did get. It is an empty patch with a sidewalks and shrubs in the middle of the parking lot. Nobody uses it. It looks like a pad waiting for development. Since that isn't the case, it looks silly. There is nothing soothing or inviting about it at all. This sort of thing might very well meet the letter of the law in Rockville. I can tell you that prior to the bust last year they could have rented that pad for as much as \$400,000 a year. That would have translated into approximately \$5.7M dollars of extra assessed value. The tax payers would be missing out tax dollars in trade for a useless park that otherwise could hold a useful retail establishment serving the needs of the community. Just imagine how much assessed value is lost when you dedicate 20% of land that is zoned for serious density like some of the land in Rockville. That is real money.

Let's look at the practicality of dedicating some land and paying a fee for the rest. First off, who gets to decide which way it goes? The people who are trying to use their land? That would be the right way, but will it be the City Way? Let's imagine one scenario: Let's say it is 10% of a

one acre site like the Shell station. That's about 4300sf = 43x100sf. It might be useful for you to pace this off in a parking lot someplace so you can see how small it really is.

Give us concrete examples. In smaller properties these will be so irrelevant and out of place that there is no way to construe these as an attraction for the business. An extra tree that blocks signs as a driver whizzes by, a smokers' station for local employees, a little park collecting trash next to the dumpsters? A public toilet at night for the homeless or a trysting spot even? If you doubt this last, ask any property manager or walk around public areas in the morning now with your eyes and nose in gear. Will it force the new building to be set back further from the road than its neighbors further destroying commercial value? Regardless of size, you burden the landowner with extra costs: They have to construct an acceptable amenity and then maintain.

So it appears that the real plan is to collect a huge, extortive fee. Otherwise, please tell us what public benefit will little postage stamp will offer.

Beware the law of unintended consequences. Try to put more faith in the property owners themselves when it comes to keeping our community viable and attractive. Over the long haul of City history it is the *people* and their businesses that deserve credit for making Rockville a decent place more so than City Hall. In times of recession like now the citizens could be very pleasantly surprised with the results of giving people their heads. But, on the other hand if current trends persist, our main corridor will one day look like a sad, tired US Route 1 after I95 was built. Fifty years later and US 1 has just begun to recover. Even now Rockville Pike has lost its glow as a regional shopping area as more competition grows up in other areas.

Local government should be looking out for how they spend tax dollars and what they do to protect the future viability of a community especially in hard times. However, making decisions that confiscate property and destroy Rockville's reputation as a good place to do business will have an effect that outlives this recession. Recent zoning changes tempt brokers to steer people elsewhere.

Please listen seriously to the thoughtful opposition to this plan that you have received and please go back and read what was placed in the public record on this topic during the zoning ordinance change. These people have a good grip on the situation.

Sincerely,

Kathleen W. Reitz

Whalen Properties, Inc.

15190 FREDERICK ROAD AERIAL, RECORD PLAT, AND SDAT RECORD



SULLY PLACE, METROTECH DRIVE AND US ROUTE 50, CHANTILLY, VA



Kathleen W. Reitz

Vice President

Whalen Properties, Inc.

17833 Bowie Mill Road

Rockville, MD 20855

Office: 301-340-6992

Cell: 240-463-0044

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image003.emz



oledata.mso

Exhibit # 2

20% Public Access
loopersc
to:
mayorcouncil
12/14/2009 02:28 PM
Show Details

Subject: _____

Public Hearing Date: _____

When discussing this matter during the Rorzar meetings the matter was raised as a 7 to 10% rate, but was never voted on for the property owners of newly developed properties. This is an unreasonable burden for the property owner to assume. The then usable square feet is downgraded and with the other requirements for city approval thus makes it unreasonable to develop a property within the city of Rockville.

Glenn Looper
President
Looper Servicer Inc
324 N. Stonestreet Ave
Rockville Md 20850
301-762-9333



Exhibit #

ATTACH F

3

Subject: _____

Public Hearing Date: _____

December 14, 2009

Mayor Marcuccio and Members of the Council
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

Re: ZTA TXT2010-00224
Fee in lieu of Public Use Space

Routed To:

☐ Council

☐ City Clerk

☒ City Manager

Brenda Bean

☒ City Attorney

☐ Council Support Specialist

☒ Other Joe Thompson

Susan Swift

2009 DEC 14 PM 1:47

CITY OF ROCKVILLE

Dear Mayor Marcuccio and Members of the Council:

Please find attached a copy of my presentation delivered at the December 7 public hearing for the above referenced items. The attached testimony and this letter are to be included in the official record. Please consider the following:

- **Zoning Text Amendment.** We recommend approval of ZTA TXT2010-00224 for all mixed use zones. This flexibility is necessary to address the very real and practical needs of operating businesses and redevelopment projects. Since most mixed use land is already developed, the zoning ordinance should be designed to accommodate alterations, expansions and redevelopment rather than new development.
- **Fee in Lieu.** The proposed fee in lieu of dedicating public use space is extremely excessive and should be eliminated or substantially reduced. If the purpose of this fee is to maintain existing public spaces, all property owners, including residents who use these facilities, should share this tax equally.

Please note that if the requirement for 20% public space were triggered at Congressional Motors, we would pursue the fee in lieu alternative since the site is completely developed and the actual use of the property is not conducive to a public park. The fee based on the currently assessed land value would be almost \$1,700,000. This is an extraordinary sum that could jeopardize the business.

- **Public Space Requirement.** The entire concept of the 20% public space requirement should be reexamined. Simply because other jurisdictions have embraced this idea does not make it a good idea, legal or most importantly smart for a responsible municipality dedicated to a vibrant, financially sound community. Clearly the City did not believe this concept was appropriate when designing Town Center which only has 3.2% public space. It would be a worthwhile exercise to consider what this requirement would have done to the Town Center development both aesthetically, functionally and financially.

Another valuable exercise in an effort to understand the landowner's position is to consider the impact to you as a homeowner if you were required to give 20% of your lot to the government or pay the value of the land plus \$3/square foot if you added on to your house. Would you ever do an addition or rebuild your house? What if you had no choice and had to expand? What



Page 2

December 14, 2009

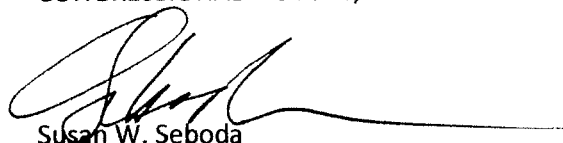
Mayor Marcuccio and Members of the Council

- would the financial implications be now and in the future to you and your family? Certainly your mortgage would not be reduced by 20%.
- **Notice to Landowners.** Please also be aware that most land and business owners with whom I have discussed this subject were unaware that the City is poised to take 20% of their property or require them to pay 20% of the land value plus \$3/square foot upon redevelopment. This action will have tremendous impact on the City's residents, businesses, employees and landowners. I strongly recommend that all landowners of mixed use zoned property, not just land use attorneys, be notified of this proposed action and another public hearing conducted.

The best strategy will be one where Rockville residents, landowners, businesses and employees all win. Unfortunately the current strategy ensures we all lose. Determining the correct strategy is best done with all parties at the table moving toward a common goal. We would be happy to participate.

Sincerely,

CONGRESSIONAL MOTORS, INC.



Susan W. Seboda
President

**Presentation to Mayor and Council
December 7, 2009**

ZTA TXT2010-00224
Fee in lieu of Public Use Space

My name is Sue Seboda, managing partner of Congressional Motors, a business that has been successfully operating in Rockville since 1954.

We support staff's recommendation for additional flexibility. We strongly believe that the proposed flexibility should not be limited to the MXE zone and should apply to every mixed use zone. Please note however, even with approval of this ZTA we strongly believe that the entire concept of the public use requirement and fee should be reexamined in detail zone by zone. Consider Congressional Motors. In this environment it is impossible to predict what we may need to do to survive and grow. VW or Mazda could require us to reconfigure and expand the parts and service area or we may need to bring in an additional carline. If this triggered the 20% public space requirement, where would we put it on a completely developed site for an operating business? Even if we could do it, who in the public would want to hang out next to our body shop or service department? You might say, well pay the fee, but that would be an extraordinary hardship in these circumstances and could seriously jeopardize the business. Any regulations that jeopardize business also jeopardize the employees and their families. I very much doubt that this is the City's intention but it could be the actual result.

Since the 20% public space requirement has no basis in sound planning principles, one has to ask what is the goal of this requirement and fee? Rather than encouraging property improvement, a requirement and fee of this magnitude is a very strong incentive to do nothing. How would stagnation impact the City and its residents both aesthetically and financially now and in the future? And rather than nothing happening, could the unintended consequence actually be bad development which could negatively impact this City for decades? We certainly have lived through that in this City.

I would strongly suggest that the City do whatever is necessary to truly understand the negative impact of these excessive fees, combined with a bad economy layered with the extremely onerous new MDE SWM regulations and for a cherry on top let's add a very long review process. This approach assumes businesses have unlimited resources to pay higher and higher fees and no time pressures. This is not the case. To be a business friendly municipality with a vibrant community and to come out of this economic downturn as quickly as possible it is essential to understand what is feasible and what is not feasible for the average business. A fee

Presentation to Mayor and Council

Page 2

December 7, 2009

of this magnitude is simply not feasible. It could encourage stagnation, may drive the mom and pops out of the City and certainly new business would think twice before relocating here.

Another question should be examined. This requirement and fee has the appearance of a taking. Has the City conducted a legal review of these proposals? If not, it would be a good idea.

In summary, please approve this ZTA for all zones and reduce this fee to something realistic. A complete review of the entire public space concept would also serve the City, its residents, businesses and employees well.

Exhibit # 7

Subject: _____

Public Hearing Date: _____

December 14, 2009

Mayor Marcuccio and Members of the Council
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

Re: ZTA TXT2010-00224
Fee in lieu of Public Use Space

Dear Mayor Marcuccio and Members of the Council:

Please find attached a copy of my comments offered at the December 7 public hearing to be included in the official record. I hope you all will consider my testimony and the following as you decide upon the next course of action.

- I believe well planned, beautiful and inviting public spaces are a critical component to the success of any urban area and that businesses should contribute to their community.
- There is over one thousand acres of mixed use land affected by the 20% requirement and the fee in lieu.
- Many properties are too small, in a location not suitable for public space, have a configuration not suitable for public space or are simply in an area where public space would not be utilized.
- You are making decisions that will impact the economic viability of our City for years to come. Please get advice from experts in the field of urban planning and development, not just tax collection, before you move forward. There has to be someone or some group that you trust. If you approach this decision with an educated and open mind, you will have served the residents and business people of Rockville well.

Thank you very much for your time and consideration. I would welcome the opportunity to discuss this matter with anyone who is interested. Until then I remain

Very Truly Yours,

Investment Properties Inc.

James F. Whalen
President

December 7, 2009

Presentation to Mayor and Council

I'm Jim Whalen with Investment Properties, Inc. I have been involved in development projects in Rockville for almost 25 years. It seems that the only time I come to testify is to complain about something, as I'm here to do tonight, but I hope you know I'm here because I want to help my community, the whole community, citizens and businesses alike.

The whole zoning process, a new code created by a committee comprised of citizens and elected/appointed officials (i.e. Rozor), was flawed. It was a committee of well meaning people who worked hard, but it was a committee of amateurs. I don't mean that as a slight, but as a point in fact. There were no professional planners with a vote on that committee. Rather than have professionals in the planning field analyze all the components that go into a long term plan, apply good planning principles and submit the plan to a group like Rozor for comments and direction, the process worked in reverse. The new code was also adopted before the master plan was completed. It usually goes the other way around. I'll go further to say that the City employed planners involved at the time were essentially reduced to order takers rather than creative collaborators (they need to feed their families after all). Now staff has to come up with this and I'm sure many more amendments to address the unintended consequences.

How about the new town center, Rockville Town Square? Do you all like it? I assume it's the city's crown jewel. The city owned the land and had total control of the finished product. Is there another place where public use space is more important and appropriate? Well, the public use space there per the definition in this code is 3.2%. That measurement was provided to me by the engineers that designed the project. Are you saying we got it wrong in Town Center? How did we get from 3.2% in a city center to 20% in the middle of Rockville Pike and almost every other business district in the City? Almost 7 times greater. I challenge you to find a credible planner in this country that will tell you that 20% is in any way a reasonable number. Certainly this body didn't think so when it approved Town Center.

So of course I'm for flexibility since the 20% makes no sense, but it starts in a flawed and unfair place – the 20%. Isn't this just another tax? This code says that you can apply the fee to improvements in existing parks. I guess that's the Ah ha! I was looking for.

Once again, it's the businesses, the ones who require almost no services and pay proportionally most of the taxes, who get the burden. Just like the storm water management tax and the art tax, this is just another level of pain that says, get out! This case is really something though. If you pass this fee, any property that is assessed based on development potential has just lost 20% of its value. This is a great time for that. Please try to think thru all the ramifications. I can't begin to explain it in 3 minutes, but it hurts the people who have already invested here and sends a clear warning signal to those

who may. One thing is certain, we will all be looking for our reduction in our assessed value since this is a clearly defined taking of value.

For most owners, it will most likely be prudent to keep the status quo and not improve their properties.

In this climate, I would not be interested in investing further in the City.

I hope you all will take a step back, get sound advice from professionals who can explain the consequences both intended and unintended and do what's really right for the city.

ATTACH F

Public Record/Mixed Use 20% fee in lieu
 Raymond J. Whalen
 to:
 mayorcouncil
 12/14/2009 04:14 PM
 Show Details

Exhibit # 5

Subject: _____

Public Hearing Date: _____

History: This message has been replied to.
 Madam Mayor and Council Members:

I am would like this correspondence to be part of the public record regarding the 20% fee in lieu of providing 20% public space on private properties in the mixed use zone. I represent Talbot Center located in the 1000 block of Rockville Pike. This property has great redevelopment possibilities but the latest scheme of dedicating 20% for public use space or pay the value of the 20%+ kills those possibilities

My first objection is that public record is only open for a week on such an important matter and no notice was sent to the landowners. I live in the city and I get notices for everything that is happening within blocks of me. Public records for matters that affect neighborhoods can be open for weeks. What is the emergency to push this through so fast during the holiday season? These commercial properties are an inextricable part of what makes Rockville a great city. Notice the landowners would seem to be the minimum courtesy.

Commercial Properties subsidize the residential tax base and as you hurt the commercial tax base by stifling redevelopment you also hurt the residents by lowering the subsidy, stifling job growth and the upgrade of the amenities. If a developer can pay a fee it is only because it can be passed on in higher rents and higher prices for services and goods. The end users, most of which are residents, pay for everything.

The principle behind the establishment of the 20% dedication for public space and the fee itself is draconian. A landowner risks a great deal to own a property and get into the position to risk even more in a redevelopment plan. The city, in effect, requires the landowner to give up 20% of your land which in the vast majority of the cases kills the plan. If the landowner doesn't want to give up the land then he/she would have to pay the city more than 20% of the value of the land they worked so hard achieve.

I would like the following questions answered:

- Was there ever a development/economic impact study done to see the effect of the 20% taking or the fee in lieu? If so can it be made public?
- Did you get a legal opinion on the possibility of this being considered a taking? If so, can that be made public?
- You trumpet the quality of your own project of Town Center that has only 3.2% public use space. Why should other properties be held to such a different standard?
- Have you studied the effect it would have had on Town Center of your development partner was held to this standard? Would you have liked the outcome?
- If the impact is as I state, is that consistent with the goals of the Rockville Pike Master Plan and new zoning? Should they be consistent?

All the information I have suggests that the city has not explored the impact of the fee on development. As stated, the 20% requirement or fee kills all redevelopment possibilities at the Talbott Center. In fact, that requirement will kill all redevelopment on medium and small lots. It just cannot be done. Candidly, it looks as if this is all about the money.

I fear that even your well intentioned employees who have no experience working in the development field think that property owners have a bottomless bag of money. I respectfully suggest that the city seek to understand what makes development work before making decisions that will produce neither development nor the fees.

ATTACH F

Regards,
Ray Whalen

Raymond J. Whalen
President
Whalen Properties, Inc.
12 Wall Street
Rockville, MD 20850
240-463-0055
rwhalen@whalenproperties.net

B A R R Y D U N N & A S S O C I A T E S P C

Exhibit # 6

Subject: _____

Public Hearing Date: _____

December 7, 2009

Public Hearing

City of Rockville



Good evening. My name is Barry Dunn of Barry Dunn and Associates, Architects and Planners.

I have worked for many years in Rockville both in site planning and designing buildings. Some of my projects include the Victoria Condominiums, One Church Street, the Wire Hardware historic renovation, 11 North Washington Street, and recently, 21 Church Street.

Drawing on this experience, I would like to offer comments on the 20% public area zoning requirement and its associated "fee in lieu." I think this requirement is a crude and simplistic planning tool and the fee in lieu only reinforces this view by attempting to introduce an element of flexibility and control to its implementation.

The planning requirement as written can only lead to a patchwork of uncoordinated and poorly designed public areas, an approach which is the very opposite of good planning principles.

I think good planning should proceed through mechanisms such as master plans and local area plans where public spaces can be located appropriately, their activities identified clearly and their desired purpose coordinated with other local public infrastructure.

Public plazas, parks, boulevards, and streetscapes may be desirable elements in any community but may not be appropriate for every development site. Without an overall vision for the community these public elements will neither be planned properly or coordinated for maximum benefit.

The fee in lieu will not correct the problems inherent in this requirement but will only obscure its inadequacy by replacing real planning with site by site tinkering.

Subject: _____

Public Hearing Date: _____

Holland & Knight

3 Bethesda Metro Center, Suite 800 | Bethesda, MD 20814 | T 301.654.7800 | F 301.656.3978
Holland & Knight LLP | www.hklaw.com

Patricia Harris
301.215.6613
patricia.harris@hklaw.com

December 14, 2009

VIA ELECTRONIC MAIL

Mayor Phyllis Marcuccio and
Members of the Rockville City Council
111 Maryland Avenue
Rockville, Maryland 20850

Re: Zoning Text Amendment TXT2010-00224

Dear Mayor Marcuccio and Members of the Council:

On behalf of several property owners within the City of Rockville, with sites in the MXE Zone and the MXTD Zone, we appreciate the opportunity to expand on the testimony provided at the December 7, 2009 hearing regarding the above-referenced Zoning Text Amendment (the "ZTA").

While we are supportive of the ZTA and believe it is a step in the right direction toward ensuring viable development, we think that the underlying premise upon which it is based – that 20 percent public use space is the appropriate amount of public use space that should be provided – is fundamentally flawed. As we testified at the public hearing, the 20 percent public use space requirement creates urban design challenges; makes it difficult to locate retail uses at the street frontage where is it most desirable; creates well intended but often under utilized public spaces; and inhibits smart growth which calls for concentrating density in transit areas. To this end, it is worth noting that the CR Zone which Montgomery County is in the process of adopting for the White Flint Metro Station area, requires a maximum of only 10 percent public use space.

With that said, we want to express our general support for the ZTA and offer further recommended revisions for your consideration.

Mayor Phyllis Marcuccio and
Members of the Rockville City Council
December 14, 2009
Page 2

I. MXE Zone

We support the change with respect to how public use space is classified in the MXE Zone. This proposed change recognizes that the MXE zone is intended primarily for office, light industrial and industrial park uses and that the potential users/beneficiaries of any open space on these properties will be the employees of a particular property itself. The ZTA will avoid the need for an owner to waste resources providing traditional public use space that is accessible to the public, which will most likely go unused. Instead, the ZTA allows for the provision of open space which is in the best interest of the employees of a particular property.

II. Building Expansions

We are encouraged by the proposed "sliding scale" (which utilizes a factor of .2 times the percentage increase in gross floor area) for the provision of public use space in cases involving a building expansion, but believe that an overall cap on the required public use space is in order. We would recommend an overall maximum public use space requirement of 15 percent in cases involving building expansions where at least 50 percent of the existing development is retained. The justifications for this are as follows:

1. The public use space is based on the net lot area and yet in cases involving expansions, a portion of the net lot area is already occupied by existing structure. Thus, simply from an arithmetic approach, the public use space should be something less than the 20 percent that is required when the development starts with a vacant parcel.

2. The retention of at least 50 percent of the existing development, makes any new development on the site much more challenging. Not only is it more challenging to locate the new buildings and parking, it is also more challenging to provide the requisite public use space. There are implicitly more constraints associated with the expansion of an existing property than there is when development starts with a vacant parcel.

3. The location of the public use space is constrained not only by the existing development, but it may also be constrained by the existing uses within the development. For example, as testified at the public hearing, the establishment of public use space adjacent to an existing auto repair operation, is less than desirable, making the accommodation of the required public use space that much more difficult.

For these reasons, we would recommend capping the sliding scale at 15 percent for any development involving an expansion of existing floor area of 75 percent or more, where at least 50 percent of the existing gross floor area is retained. This would provide greater flexibility in connection with the expansion of an existing property. Accordingly, we have attached a recommended revision to Section 25.17.01c for your consideration.

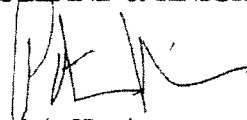
Mayor Phyllis Marcuccio and
Members of the Rockville City Council
December 14, 2009
Page 3

In summary, we encourage the Mayor and Council to adopt the ZTA as it relates to the MXE Zone. In addition, we encourage the Mayor and Council's consideration of the recommended revision relating to the provision of public use space in cases involving an expansion of existing development.

We appreciate the opportunity to comment on the ZTA.

Sincerely yours,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read 'PHK', is written over the firm name.

Patricia Harris

Attachment

cc: Ms. Susan Swift
Mr. Jim Wasilak
Mr. Deane Mellander

9034570_v1

Section 25.17.01 – Public Use Space

c. ~~Where development does not comply with~~ The following regulations apply to the public use space requirement, the following regulations apply including building expansions:

1. Building expansions that exceed 50 percent and up to ~~400~~75 percent of the existing gross floor area must provide a proportionate amount of public use space on the site using a factor of 0.2 times the percentage increase in gross floor area up to the required 20 percent public use space requirement (Example: 75 percent increase in existing floor area x 0.2 = 15 percent public use space requirement); provided however that the maximum public use space to be provided for any building expansion or cumulative addition that exceeds 75 percent of the existing gross floor area and involves the retention of at least 50 percent of the existing floor area is 15 percent of the net lot area.

2. Any building expansion or cumulative addition that exceeds 100 percent of the existing gross floor area and does not involve the retention of at least 50 percent of the existing floor area must provide public use space as set forth in Section 25.13.05 b.1.

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0034570 -92

Holland & Knight

3 Bethesda Metro Center, Suite 800 | Bethesda, MD 20814 | T 301.654.7800 | F 301.656.3978
Holland & Knight LLP | www.hklaw.com

Exhibit # 8
ATTACH F

Subject: _____

Public Hearing Date: _____

December 14, 2009

Routed To:

☒ Council
☐ City Clerk
☒ City Manager

☒ City Attorney
☐ Council Support Specialist
☒ Other Susan Swift
Dean Mellander
Jim Wasilak

William Kominers
301 215 6610
william.kominers@hklaw.com

2009 DEC 16 AM 11:11

CITY OF ROCKVILLE

BY ELECTRONIC AND REGULAR MAIL

The Honorable Phyllis Marcuccio, Mayor
and Members of the Rockville City Council
111 Maryland Avenue
Rockville, Maryland 20850

Re: Zoning Text Amendment TXT2010-00224 and Fee In Lieu of Public Use
Space Calculation

Dear Mayor Marcuccio and Members of the Council:

This letter is written as an attorney regularly representing non-residential property owners in the City, to present a compilation of comments that I have received on the above-referenced Zoning Text Amendment (the "ZTA") and fee calculation. Please include this letter in the Record of the December 7, 2009, public hearing.

We support the ZTA in general. The ZTA allows greater flexibility related to public use space in the MXE Zone and in the expansion of existing structures. This is a positive step toward addressing the public use space issue in a realistic manner that can account for individual site conditions. Unfortunately, the ZTA stops short of applying this solution to all mixed use zones and does not deal with the flaw of the basic underlying premise -- the uniform requirement of 20 percent public use space.

1. MXE Zone

We certainly support the change with respect to how public use space is classified in the MXE Zone. This part of the ZTA recognizes that the MXE zone is intended primarily for office, light industrial and industrial park uses and that the potential users of any open space on these properties most likely will be the employees of the particular property itself. These employees need spaces for their own use. The ZTA will remove the need for an owner to expend resources providing traditional public use space that is accessible to the public -- that will most likely go unused -- in addition to (or in place of) the spaces used by those already on-site. Instead, the ZTA allows for design and placement of open space that is more suited to the needs, and that is in the best of interests of the employees of a particular property.

2. Treatment of Other Mixed Use Zones

While applying the flexibility of the ZTA to the MXE Zone is desirable, the same flexibility is appropriate in all the mixed use zones. All need flexibility in order to achieve greater functional design solutions. Even typical urban locations do not always need 20 percent of the land area designated for use by the general public. In urban locations, the public use space will likely compete for street frontage, which then limits retail store fronts.

The uniform standard of 20 percent in all mixed use zones can create a plethora of under-utilized, potentially undersized public spaces, as each site tries to provide the required percentage. This is especially a burden for smaller properties. As an example, not all MXCD locations are on major arteries where an urban form might be appropriate. In those more outlying areas, spaces more focused on the site users (residential or non-residential) may be appropriate.

In evaluating changing urban design concepts and goals, Montgomery County has changed its paradigm of 20 percent on every central business district site, to instead allow some or all of the space to be located off-site, or supported by payment-in-lieu. This helps the overall urban fabric by facilitating concentration of multiple off-site spaces to create meaningful public spaces, or collection of funds for acquisition of new spaces or rehabilitation of old. But the cost of the in lieu payment must be economically reasonable in order to function.

The City should not delay application of this new treatment of public use space to the other mixed use zones until after the Rockville Pike Plan is revised (as was suggested in the Staff Response to the Planning Commission recommendations). Since December 2008 when these zones were applied under the sectional map amendment, property owners have lived with the consequences. They need the ability to manage, use, and upgrade their properties now, and in the interim as the Rockville Pike Plan proceeds.

3. Expansions of Existing Structures

The proposed "sliding scale" (which utilizes a factor of .2 times the percentage increase in gross floor area) for the provision of public use space in cases involving a building expansion is a good approach.

Currently, if expansion crosses the 50 percent boundary, the 20 percent public use space requirement applies in full. This inhibits business expansion and upgrading of buildings because many sites cannot accommodate expansion, parking, and the full public use space. The ZTA ameliorates this rather extreme bright line treatment of expansion of existing structures by creation of the sliding scale. These existing structures

represent ongoing business that cannot be static in operations or facilities. The ZTA will allow businesses in structures or sites with existing development standards non-conformities to have reasonable expansion potential, without causing major disruption of a site or causing public use space to be placed in incompatible locations.

At the same time, the City must keep in mind that the choice of location and amount of contiguous area may be severely limited on already-developed properties. While the public use space is based on the net lot area, in cases of expansion of existing structures, a portion of that net lot area is already occupied by the existing structure and its support elements. Therefore, from a purely mathematical standpoint, the public use space should be something less than the 20 percent that is otherwise required with a vacant parcel. Likewise, retaining all or part of the existing development makes any new development on the site much more challenging. There are implicitly more constraints associated with the expansion of an existing structure than when development starts with a clear slate.

4. Reexamine the Basic 20 Percent Standard

The City should reexamine the underlying 20 percent public use space requirement. Uniformly applying the 20 percent to all properties at all locations, regardless of size, does not provide a framework for site-specific design solutions. While there may be some places where 20 percent is the right amount, it certainly is not appropriate in all locations.

5. Payment in Lieu Cost Is Too High

Using the assessed value as the basic element for payment in lieu for some or all of the public use space requirement will work against use of this alternative method. The assessment value approach essentially causes the owner to pay 120 percent for the property. While many owners might consider selling for such a premium, few would buy the property for that price. The assessed value does not always represent a fair value relative to the owner. Especially for long-held properties, a development may only be viable because the land cost to the owner is significantly below current market value. To insert the current assessment into the calculation may deprive the owner of the economic advantage that allows the project to proceed.

Setting the price too high is simply likely to result in no one using this alternative. This works against the City in two ways -- first, the City obtains no resources for facilities; second, no one builds if they cannot accommodate the public use space on-site, but cannot simultaneously afford the proposed development with the added cost for the payment-in-lieu.

6. Timing for Action

Finally, we recommend that the City take a little more time to explore the impacts of public use space and the ZTA with property owners and design professionals who will be impacted. Leave the Record open longer; one week is a very short time, especially as the Holiday Season approaches -- as evidenced by the limited number of speakers at the public hearing. Delay D&I until thorough comment and analysis occurs. Conduct outreach to the Chamber of Commerce and those business groups that will be the most affected. As was done during the RORZOR review, perhaps hold a well-publicized informational session at City Hall about the ZTA, so as to provide an easy forum for comments by these affected groups.

In summary, we encourage the Mayor and Council to adopt the ZTA as it relates to the MXE Zone and with the "sliding scale" for expansion of existing structures. In addition, we encourage the Mayor and Council to reconsider the appropriateness of a uniform 20 percent public use space requirement in all mixed use zones and the current valuation approach for the payment in lieu.

Thank you for the opportunity to comment on the ZTA.

Very truly yours,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "William Kominers", written over the printed name.

William Kominers

cc: City Clerk
Ms. Susan Swift
Mr. James Wasilak
Mr. Deane Mellander

#9035158_v1

ROCKVILLE

CHAMBER OF COMMERCE

Subject: _____
Public Hearing Date: _____

December 28, 2009

Mayor and Council
City of Rockville
111 Maryland Avenue
Rockville, MD 20850

Routed To:
☒ Council
☐ City Clerk
☒ City Manager

☒ City Attorney
☐ Council Support Specialist
☒ Other Brenda Bean

2009 DEC 28

CITY CLERK'S OFFICE

Dear Mayor and Council:

The Rockville Chamber of Commerce is extremely concerned that the proposed calculation for the Fee in Lieu of Public Use Space requirement, pursuant to Subsection 25.17.01.d.2. of the Zoning Ordinance will have a negative effect on businesses in the City. We know that we do not have to remind you that the business community is struggling to stay alive during the most severe recession in decades. In difficult budget times, you have supported the Buy Rockville campaign because you understand the importance of a healthy and strong business sector. The level of fees that you are proposing will discourage new businesses from locating in Rockville and will inhibit existing businesses from expanding and/or renovating.

We understand that the fee is purposely being set extremely high to discourage businesses from opting out of providing the 20% public use space. While we applaud you for wanting to create space available for the general public, we feel that this should not be provided on the backs of business, and will often not be feasible. We believe that there may be a way to achieve your goals while not being punitive to businesses.

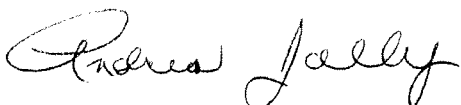
In addition, the imposition of a 20% requirement is excessive in light of the compact nature of most land in the City (and the lower requirements in Town Center) and will have severe economic repercussions for businesses that want to expand or relocate to Rockville. The City should be looking for ways to anticipate the projected recovery and to make it easier for existing businesses to expand and to make Rockville the city of choice for new businesses and those looking to relocate. We will certainly face stiff competition from our neighbors in Gaithersburg and Bethesda for these businesses.

We propose a meeting with you and the Rockville planning office and potentially affected businesses. We will be happy to facilitate the meeting.

We propose a meeting with you and the Rockville planning office and potentially affected businesses. We will be happy to facilitate the meeting. Please table the introduction of legislation regarding fees until such time as a meeting(s) can be held.

Thank you very much for your consideration in this matter. We look forward to working with you on this and on all matters pertaining to business in the City of Rockville.

Sincerely,

A handwritten signature in black ink, reading "Andrea Jolly". The signature is written in a cursive, flowing style.

Andrea Jolly, Executive Director

Exhibit # 10

Subject: _____

Public Hearing Date: _____

SHULMAN
ROGERSGANDAL
PORDY
ECKERLARRY A. GORDON : ATTORNEY
T 301.230.6576 E lgordon@shulmanrogers.com

December 14, 2009

By Email

Hon. Phyllis Marcuccio, Mayor
and City of Rockville Council Members
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

Re: Proposed City of Rockville Zoning Text Amendment and Regulations Regarding
Public Use Space and Fee-in-Lieu Payments

Dear Mayor Marcuccio and Council Members:

This letter respectfully recommends certain changes to the City's Draft Zoning Public Use Space Amendment and Regulations based upon my 27 years of experience practicing land use law in and around Montgomery County (including representation of automobile dealerships in the City of Rockville and in Montgomery County) and 21 years as Adjunct Professorial Lecturer in Land Use Law at The George Washington University Law School. As you will recall, I was an active participant in the City's new Zoning Ordinance process.

Please include this letter in the record of your Mayor and Council proceedings on the public use space and fee-in-lieu payment issues.

Most existing automobile dealerships in Rockville are located along Rockville Pike/Frederick Road and are situated on properties that have been zoned Mixed-Use Corridor District ("MXCD"). As such, they are subject to the public use space requirements found in Zoning Ordinance Art.17, Sec. 25.17.01.

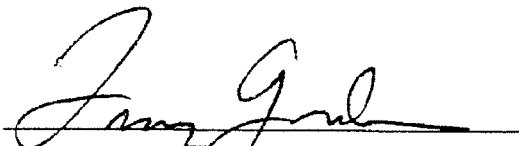
Automobile dealerships should not be subject to any "public use space" requirements, let alone a 20% requirement. Inviting public recreation, either passive or active, onto a private automobile dealership is antithetical to public safety and dealership security since dealership inventory and repair vehicles are constantly being moved during the daytime and the sites are secured at night. Rather than a "public use space" requirement, dealerships should have an open space requirement. Further, since dealerships (i.e., their uses, employees and customers) do not create any need for "public use space", a 10% "open space" requirement would be far more appropriate than a 20% "public use space" requirement.

SHULMAN
ROGERSGANDAL
PORDY
ECKERHon. Phyllis Marcuccio, Mayor
and City of Rockville Council Members
December 14, 2009
Page 2

With regard to a fee-in-lieu payment alternative, this alternative should be available to all mixed use zones. However, the currently proposed fee rate is far too high to enable it to be a reasonable alternative to providing land itself. Please review your proposed figures with a panel of mixed-used zone property owners, including automobile dealers, to ascertain a more reasonable fee-in-lieu rate (especially in the current and projected economic environment) before settling upon a final fee-in-lieu figure.

Thank you for your consideration.

Very truly yours,


Larry A. Gordon, Esq.

cc: Rockville City Council Members
Mr. Scott Ullery
Ms. Susan Swift
Mr. James Wasilak
Mr. Deane Mellander
Ms. Brenda Bean
Ms. Claire Funkhouser

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